

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

PATRICK LOUIS HENDERSON and
CHRISTINE DIANE HENDERSON

Case No. 6:19-cv-00724-MK
OPINION AND ORDER

Plaintiffs,

vs.

OREGON DEPARTMENT OF HUMAN
SERVICES,

Defendant.

AIKEN, District Judge:

Magistrate Judge Mustafa T. Kasubhai issued a Findings & Recommendation (F&R) (doc. 16) on September 6, 2019, recommending that plaintiffs' Amended Complaint (doc. 9) be dismissed without prejudice and plaintiffs' IFP Petition (doc. 2) and Motion for Appointment of Pro Bono Counsel (doc. 12) be denied as moot. Plaintiffs timely filed objections (doc. 18) to the F&R. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When a party objects to any portion of the Magistrate Judge's F&R, the district court must make a *de novo* determination of that portion of the Magistrate Judge's

report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

Having reviewed the F&R and pertinent portions of the record *de novo*, the Court finds no errors in the Magistrate Judge's Findings & Recommendation but will hold Plaintiffs' IFP application in abeyance pending the filing of a second amended complaint. The Court agrees with the Magistrate Judge's recommendation that plaintiffs' motion for pro bono counsel be denied. At this time, the Court does not find that exceptional circumstances exist to warrant appointment of counsel. *See Wood v. Housewright*, 900 F.2d 1332, 1335 (9th Cir. 1990).

CONCLUSION

The Court ADOPTS Magistrate Judge Kasubhai's F&R (doc. 16) with the modifications noted above. Plaintiffs' Amended Complaint (doc. 9) is DISMISSED without prejudice' and plaintiffs' Motion for Pro Bono Counsel (doc. 12) is DENIED. Plaintiffs shall have 30 days from the entry of this order in which to file a second amended complaint. Failure to file an amended complaint within the time allotted will result in dismissal of this action. The Court will defer ruling on plaintiffs' IFP Petition (doc. 2) pending filing of an amended complaint.

IT IS SO ORDERED.

Dated this 13th day of December 2019.



Ann Aiken
United States District Judge